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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130822745-4627-01]

RIN 0648-BD64

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Information Collection.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes an information collection program for the Atlantic surfclam and ocean quahog fishery. The intended effect of this rule is to collect more detailed information about individuals and businesses that hold fishery quota allocation in the Atlantic surfclam and ocean quahog individual transferable quota programs. This action is necessary to ensure that the Mid-Atlantic Fishery Management Council has the information needed to develop a future management action intended to establish an excessive share cap in this fishery.

DATES: Comments must be received by [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0088, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-

Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0088, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- Fax: (978) 281-9135, Attn: Douglas Potts.

- Mail: John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Surfclam/Ocean Quahog Information Collection.”

Instructions: All comments received are part of the public record and will generally be posted to www.regulations.gov without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978-281-9341.

SUPPLEMENTARY INFORMATION:

Background

Section 402(a)(1) for the Magnuson-Stevens Fishery Conservation and Management Act

authorizes the Secretary of Commerce to implement an information collection program if a fishery management council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan (FMP). The Mid-Atlantic Fishery Management Council requests that NMFS implement an information collection program in the Atlantic surfclam and ocean quahog individual transferable quota (ITQ) fisheries. The specific components of the requested information collection are detailed in a white paper titled, “Data Collection Recommendations for the Surfclam and Ocean Quahog Fisheries” that was prepared by the Surfclam and Ocean Quahog Data Collection Fishery Management Action Team, at the direction of the Council. The purpose of this information collection is to better identify the specific individuals who hold or control ITQ allocation in these fisheries. The Council will use the information collected to inform the development of a future management action intended to establish an excessive share cap as part of the Council’s Surfclam/Ocean Quahog FMP.

The Atlantic surfclam and ocean quahog fisheries have been managed under an ITQ system since 1990. Vessel owners received an initial allocation of quota share based on a formula of historical catch and vessel size. Each year, the total commercial quotas for the surfclam and ocean quahog ITQ fisheries are divided among the individuals who hold quota share. Annual allocations take the form of cage tags for the standard 32-bushel (1,700L) cages, which must be used to land the product. The quota share or cage tags are both considered types of ITQ allocation, and may be leased or sold to anyone, except foreign owners.

While managed jointly, the surfclam and ocean quahog ITQ fisheries are operationally distinct. The commercial quotas, quota shareholders, and cage tags are different for the two species. In addition, vessels may not land both surfclams and ocean quahogs on the same trip.

Because these fisheries are managed in the same way, this information collection program applies equally to both fisheries.

Currently, NMFS collects only basic information about the individuals or businesses that hold surfclam and ocean quahog ITQ allocations. This information is collected at the time that an entity first acquires ITQ allocation and is not routinely verified or updated. The information collection program proposed by this action is intended to identify the specific individuals who have an ownership interest in surfclam or ocean quahog ITQ allocation through a corporation, partnership, or other entity, or control the use of ITQ allocation through the use of long-term contracts or other agreements. This action would also ensure that the ownership information on file remains current by modifying the procedures for receiving and maintaining an ITQ allocation permit.

With this action, we are proposing to change the current surfclam and ocean quahog ITQ allocation permit, which currently never expires, into an annual ITQ permit. A surfclam or ocean quahog ITQ permit would need to be renewed each year before the ITQ permit holder could receive cage tags. In addition, if the permit holder has quota share, the permit would need to be renewed before the end of the fishing year or that quota could be considered voluntarily relinquished, and no longer eligible to receive an annual allocation of cage tags.

To receive a surfclam or ocean quahog ITQ permit, an applicant would need to complete both an ITQ permit application form and an ITQ ownership form. In subsequent years, the permit renewal process would require the applicant to review a pre-filled copy of these forms, make any necessary changes, then sign and submit the forms to NMFS in order to verify that the information on file remains current. Any transfer of ITQ quota share or cage tags would require an ITQ transfer application form.

Application for Surfclam/Ocean Quahog ITQ Permit

The ITQ permit application form would collect the applicant's name, business address, telephone number, and date of birth (for individuals) or taxpayer identification number (TIN) (for businesses) to positively identify people or businesses with similar names. The applicant would also need to verify that the permit holder meets the requirement to be eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b). This requirement ensures that the applicant is a U.S. citizen or a U.S. controlled corporation.

Surfclam/Ocean Quahog ITQ Ownership Form

The ITQ ownership form would collect detailed information about the entities that hold ITQ allocation. The form would collect the ITQ permit holder's name, business address, telephone number, date of birth (for individuals) or TIN (for businesses), state registered in (for businesses), and identify the organization type (e.g., individual/sole proprietorship, joint ownership, partnership, corporation, etc.).

As requested by the Council, the form would allow state or federal chartered banks that hold ITQ allocation as collateral on a loan, but do not exert control over the use of the allocation, to attest to this fact. Such banks would need to identify the borrower, but would not need to complete the more detailed ownership information described below. To ensure that the borrower is the controlling factor in the use of the ITQ allocation, the borrower would need to maintain a separate ITQ permit, and any transfer of quota share or cage tags from the bank would be restricted to the borrower. Allocation could then be transferred to a third party, at the discretion of the borrower. A borrower would therefore need to complete the more detailed ownership information in order to maintain a valid ITQ permit.

ITQ holders that are not eligible banks would need to provide more detailed ownership

information. An ITQ permit holder that is a business entity would need to identify corporate officers. All ITQ permit holders would need to identify any shareholders with a 10 percent or greater ownership interest in the permit holder down to the individual level. This means that if an ITQ permit is held by a business entity, and that business is owned in part by another business entity, ownership of that second business would also need to be identified to the level of individual persons that make up that business. If that second business was part owned by another business entity, then ownership of that third business would need to be identified to the level of individual persons, and so on. In addition, the applicant would need to identify any immediate family members of the ITQ permit holder, or the individuals who have an ownership interest in the ITQ permit holder, that also have an ownership interest in any other surfclam or ocean quahog ITQ permit. For purposes of this collection, we are using the definition of “immediate family member” used by the Small Business Administration: Father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, and mother-in-law.

Application to Transfer Surfclam/Ocean Quahog ITQ

The current ITQ transfer form would be modified by this action. Information about the allocation holder would be removed, as that would now be collected through the ITQ permit application and the ITQ ownership form. The transfer form would clarify whether or not a permanent transfer of ITQ quota share includes all of the cage tags for the current fishing year. The current transfer process does not allow a permanent transfer of quota share without also transferring all of the associated cage tags for the current fishing year. This can be restrictive on quota shareholders who might wish to transfer quota share separate from transfer of the current allocation of cage tags. This action would add questions to the transfer form to better understand

the nature of the transfer. These questions include: Total price paid for the transfer, including any fees; broker fees paid, if applicable; whether the transfer is part of a long-term (more than 1 year) contract; if so, the duration of the contract and whether the price is fixed or flexible; and any other conditions on the transfer. As on the current transfer form, both parties would need to sign the form.

In addition, this action would make minor corrections and clarifications to the surfclam and ocean quahog regulations. The current regulations contain an outdated cross reference to the portion of the U.S.C. that defines which persons or entities are eligible to own a documented vessel. Several paragraphs in the Prohibitions section at § 648.14(j) that pertain to the surfclam and ocean quahog fisheries have incorrect cross references to other sections of the part 648 regulations. The regulations specifying when the Regional Administrator may deny a transfer are currently unclear. This action would revise the regulations to provide additional detail and clarity.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the Atlantic Surfclam and Ocean Quahog FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The factual basis for this certification is as follows:

The proposed measures would only affect allocation permit holders that would need to apply for the new annual ITQ permit. This includes entities that hold surfclam or ocean quahog quota share, or that lease the cage tags that are used to land product in these fisheries. In 2013, there were 189 allocation permit holders that either held quota share and/or participated in a lease of cage tags for surfclams or ocean quahog.

Note that individual allocations are often registered in the name of a corporation, rather than an individual. It is common for owners of multiple fishing vessels to list each one as being owned by a separate corporation for the purpose of limiting liability. Similarly, a single individual might hold multiple allocations that are listed in NMFS's records as being registered to distinct corporations for the same reason. Banks that have loaned money to allocation holders will often require that the allocation be placed in the bank's name as collateral for the loan. A single individual may have several such loans. As such, it is important to understand that the number of allocations is not equal to the number of allocation owners. The number of owners will be smaller due to the ownership of multiple allocations, which may be listed under a corporate name or in the name of a bank.

However, NMFS currently does not have information to characterize small entities at the ITQ allocation level. Instead, information on fishing activities is used to characterize and enumerate small entities. One of the benefits of this action would be a better understanding of ownership of allocation holders, which could lead to better identification of small entities and help analyze the impacts of future management actions.

The Small Business Administration defines a small business in the commercial shellfish harvesting sector, as a firm with total annual receipts (gross revenues) not in excess of \$5.5 mil.

In 2012, there were 498 fishing firms that held at least one surfclam or ocean quahog vessel permit. Vessel permits are open access, available to anyone who applies. Many of the permitted vessels do not actively participate in the fishery. These potential participants likely do not own quota, likely do not have established marketing relationships with surfclam and ocean quahog processors, and likely do not own gear needed to harvest surfclam and ocean quahog. Therefore, while there are 498 regulated entities, many of these entities are only potential participants and unlikely to experience any direct effects of any changes in regulations. In order to provide a more accurate count and description of the directly regulated entities, landings data are used to select only firms that were active in either the surfclam and ocean quahog fishery. There are 38 active fishing firms, of which 36 are small entities and 2 are large entities.

Some of the detailed ownership information has not been previously collected, we have estimated just over one hour of additional time and effort will be necessary on the part of the ITQ permit holder to complete the forms in the first year. However, in subsequent years, renewal forms would be sent to ITQ permit holders completed with the information on file. An ITQ permit holder would just need to review and sign the forms to ensure that the information on file is still correct. This review process is estimated to take 5 minutes per form if the ownership information does not need to be changed.

Therefore, because this action is administrative and because no significant change in fishing effort, participation in the fishery, or fishery expenses is expected, this action will not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act

(PRA). These requirements have been submitted to OMB for approval. Public reporting burden is estimated to average 5 minutes per response for the application for surfclam/ocean quahog ITQ permit; 60 minutes per response for new entrants completing the surfclam/ocean quahog ITQ ownership form and to average 5 minutes per response when the form is pre-filled for renewing entities; and the application to transfer surfclam/ocean quahog ITQ are estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Greater Atlantic Regional Fisheries Office at the ADDRESSES above, and e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 1, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.14, revise paragraphs (j)(1)(ii), (j)(2), (j)(3)(v), (j)(3)(vi), (j)(5)(ii), (j)(5)(iv), (j)(5)(v), (j)(6)(ii), (j)(6)(iii) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(j)* * *

(1)* * *

(ii) Shuck surfclams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Administrator under the terms of § 648.75.

* * * * *

(2) Transfer and purchase. (i) Receive for a commercial purpose other than solely for transport on land, surfclams or ocean quahogs harvested in or from the EEZ, whether or not they are landed under an allocation under § 648.74, unless issued a dealer/processor permit under this part.

* * * * *

(3)* * *

(v) Possess an empty cage to which a cage tag required by § 648.77 is affixed, or possess any cage that does not contain surfclams or ocean quahogs and to which a cage tag required by § 648.77 is affixed.

(vi) Land or possess, after offloading, any cage holding surfclams or ocean quahogs without a cage tag or tags required by § 648.77, unless the person can demonstrate the inapplicability of the presumptions set forth in § 648.77(h).

* * * * *

(5)* * *

(ii) Land unshucked surfclams and ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages unless, with respect to ocean quahogs, the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.74.

(iii)* * *

(iv) Offload unshucked ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages, unless the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.74.

(v) Land or possess ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone after the effective date published in the FEDERAL REGISTER notifying participants that Maine mahogany quahog quota is no longer available for the respective fishing year, unless the vessel is fishing for an individual allocation of ocean quahogs under § 648.74.

(6)* * *

(ii) Surfclams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.74(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.74.

(iii) Surfclams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and are deemed to be part of an individual's allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.74; or, unless the preponderance of available evidence demonstrates that he/she has surrendered his/her surfclam and ocean quahog permit issued under § 648.4 and he/she conducted fishing operations exclusively within waters under the jurisdiction of any state. Surfclams and ocean quahogs in cages with a Federal tag or tags,

issued and still valid pursuant to this part, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 648.74 or § 648.77(b).

* * * * *

3. Revise § 648.74 to read as follows:

§ 648.74 Individual Transferable Quota (ITQ) Program.

(a) Annual individual allocations. Each fishing year, the Regional Administrator shall determine the initial annual allocation of surfclams and ocean quahogs for the next fishing year for each ITQ permit holder holding ITQ quota share pursuant to the requirements of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the quota share percentage held by each ITQ permit holder as of the last day of the previous fishing year in which quota share holders are permitted to permanently transfer quota share percentage pursuant to paragraph (b) of this section (i.e., October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.72. The total number of bushels of annual allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.77. Amounts of annual allocation of 0.5 cages or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of annual allocation greater than 0.5 cages created by this division shall be rounded upward to the nearest whole number, so that annual allocations are specified in whole cages.

(1) Surfclam and ocean quahog ITQ permits. Surfclam and ocean quahog ITQ allocations shall be issued in the form of annual ITQ permits. The ITQ permit shall specify the quota share percentage held by the ITQ permit holder and the annual allocation in cages and cage tags for each species.

(i) Eligibility. In order to be eligible to hold a surfclam or ocean quahog ITQ permit, an individual must be eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).

(ii) Application. (A) General. Applicants for a surfclam or ocean quahog ITQ permit under this section must submit a completed ITQ permit application and a completed ITQ ownership form on the appropriate forms obtained from NMFS. The ITQ permit application and ITQ ownership form must be filled out completely and signed by the applicant. The Regional Administrator will notify the applicant of any deficiency in the application.

(B) Renewal applications. Applications to renew a surfclam or ocean quahog ITQ permit must be received by November 1 to be processed in time for permits to be issued by December 15, as specified in paragraph (a)(1)(iii) of this section. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An ITQ permit holder must renew his/her ITQ permit(s) on an annual basis by submitting an application and an ownership form for such permit prior to the end of the fishing year for which the permit is required. Failure to renew a surfclam or ocean quahog ITQ permit in any fishing year will result in any surfclam or ocean quahog ITQ quota share held by that ITQ permit holder to be considered abandoned and relinquished as specified in paragraph (a)(1)(ix) of this section.

(iii) Issuance. Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by November 1, as specified in paragraph (a)(1)(ii)(B) of this section, NMFS shall issue annual ITQ permits on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.77(b).

(iv) Duration. An ITQ permit is valid through December 31 of each fishing year unless it

is suspended, modified, or revoked pursuant to 15 CFR part 904, or revised due to a transfer of all or part of the ITQ quota share or cage tag allocation under paragraph (b) of this section.

(v) Alteration. An ITQ permit that is altered, erased, or mutilated is invalid.

(vi) Replacement. The Regional Administrator may issue a replacement permit upon written application of the annual ITQ permit holder.

(vii) Transfer. The annual ITQ permit is valid only for the person to whom it is issued. All or part of the ITQ quota share or the cage tag allocation specified in the ITQ permit may be transferred in accordance with paragraph (b) of this section.

(viii) Fee. The Regional Administrator may, after publication of a fee notification in the FEDERAL REGISTER, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(ix) Abandonment or voluntary relinquishment. Any ITQ permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to renew in accordance with paragraph (a)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year, except as specified in paragraph (a)(1)(x) of this section.

(x) Transitional grace period. A surfclam or ocean quahog quota share holder who does not apply for an ITQ permit before the end of the 2015 fishing year, may be granted a grace period of up to one year to complete the initial application process, and be issued an ITQ permit, before the quota share is considered permanently relinquished. If an individual is issued a 2015 ITQ permit, but fails to renew that ITQ permit before the end of the 2016 fishing year, the Regional Administrator may allow a grace period until no later than July 1, 2017, to complete the renewal process and retain the permit. A permit holder may not be issued cage tags or transfer quota share until a valid ITQ permit is issued. Failure to complete the ITQ permit application or

renewal process, and be issued a valid ITQ permit before the end of such a grace period would result in the ITQ permit and any associated ITQ quota share being permanently forfeit.

(2) [Reserved]

(b) Transfers—(1) Quota share percentage. Subject to the approval of the Regional Administrator, part or all of a quota share percentage may be transferred in the year in which the transfer is made, to any person or entity with a valid ITQ allocation permit under paragraph (a). Approval of a transfer by the Regional Administrator and for a new ITQ permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new ITQ permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer form supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised ITQ permit from the Regional Administrator reflecting the new quota share percentage. An application for transfer may not be made between October 15 and December 31 of each year.

(2) Cage tags. Cage tags issued pursuant to § 648.77 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

(3) Denial of ITQ transfer application. The Regional Administrator may reject an application to transfer surfclam or ocean quahog ITQ quota share or cage tags for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid surfclam or ocean quahog ITQ permit for the appropriate species; the transferor's or transferee's

surfclam or ocean quahog ITQ permit has been sanctioned pursuant to an enforcement proceeding under 15 CFR part 904; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer ITQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

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